IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 27746 of 2006(C)

PETITIONER:

P. SURESH, S/O.SUBRAMANYAN,
CHENNIKARA, NULLIPPADI, KASARAGOD.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS:
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1. **DHANWANTHARI CENTRE,**
   KASARGOD, REPRESENTED BY ITS SECRETARY
   (DISTRICT PLANNING OFFICER) KASARAGOD.

2. **THE DISTRICT COLLECTOR, KASARAGOD.**

3. **THE SUB DIVISIONAL MAGISTRATE AND**
   REVENEU DIVISIONAL OFFICER,
   KANHANGAD, KASARAGOD.

4. **THE TAHSILDAR, KASARAGOD.**

5. **THE VILLAGE OFFICER,**
   KASARAGOD VILLAGE, KASARAGOD.

6. **THE VILLAGE ASSISTANT,**
   KASARAGOD VILLAGE, KASARAGOD.

BY ADV. SRI.D.KRISHNA PRASAD for R1
SRI.D.NARENDRANATH
SMT.O.K.SANTHA
BY GOVERNMENT PLEADER SRI. I.V. PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON 13/03/2007 DELIVERED THE FOLLOWING:

WPC.NO.27746/2006 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE AGREEMENT DTD. 24/11/1988 ENTERED INTO BETWEEN THE SECRETARY OF THE 1ST RESPONDENT AND THE PETITIONER.

EXT.P2: COPY OF THE PETITIONER AND 1ST RESPONDENT IN AGREEMENT DTD. 28/04/2001.

EXT.P3: COPY OF THE NOTICE DTD. 13/03/2002 ISSUED BY THE 1ST RESPONDENT DEMANDING TO VACATE THE PREMISE.

EXT.P4: COPY OF THE REPRESENTATION DTD. 11/06/2002.

EXT.P5: COPY OF THE ISSUED RECEIPT DTD. 2/12/2002 ISSUED BY THE 1ST RESPONDENT.

EXT.P6: COPY OF THE NOTICE DTD. 5/03/2003.

EXT.P7: COPY OF THE REPLY DTD. 12/03/2003 BEFORE THE 2ND RESPONDENT.

EXT.P8; COPY OF THE JUDGMENT DTD. 11/10/2005 IN O.P.NO.9948 OF 2003.

EXT.P9: COPY OF THE APPEAL MEMORANDUM.

EXT.P10: COPY OF THE RECEIPT OF REPLY OF THE PETITIONER.

EXT.P11: COPY OF THE RECEIPTS JANUARY, FEBRUARY AND MARCH.

EXT.P12: COPY OF THE ORDER OF THE DISTRICT COLLECTOR IN THE APPEAL.

EXT.P13: COPY OF THE NOTICE ISSUED TO THE PETITIONER.

EXT.P14: COPY OF THE REPLY BY THE PETITIONER.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF THE PETITION DTD. 10/08/2006 SUBMITTED BY THE MOTHER OF THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.R1(B): COPY OF NOTICE DTD. 26/09/2006 NO.17385/06/J4 ISSUED BY THE ADDITIONAL TAHSILDAR, KASARAGOD TO THE PETITIONER.

EXT.R1(C): COPY OF ORDER DTD. 3/10/2006 IN J4 – 17385/2006 PASSED BY THE ADDITIONAL TAHSILDAR, KASARAGOD.

EXT.R1(D): COPY OF PROCEEDINGS 4/10/2006 NO.J4-17385/2006 OF THE ADDITIONAL TAHSILDAR, KASARAGOD.

/TRUE COPY/

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No. 27746 OF 2006-C

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Dated this the 13th day of March, 2007.

JUDGMENT

The petitioner was granted a licence of a premises in a building belonging to the first respondent Dhanwanthari Centre. He faced orders of dispossession under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. By Ext.P8 judgment, this Court relegated him to the appellate authority under that statute. By Ext.P12, the appellate authority held that Dhanwanthari Centre, though a charitable society, is one started using State Government funds and cannot be said to come under the category of “public premises” under the aforesaid Act. Accordingly, it was held that no eviction could be enforced under that Act. Thereafter, Ext.P13 was issued requiring the petitioner to vacate. On the basis of Ext.P14 objections, Ext.R1(b) show cause notice was issued to the petitioner

under the provisions of the Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968. That led to Ext.R1(c) proceedings which was passed after serving Ext.R1(b) and by affixture. There is no reply affidavit refuting the contentions in the counter affidavit. So much so, I am inclined to take the view that Ext.R1(c) was issued after service of Ext.R1(b) show cause notice by affixture.

2. On the basis of the arguments advanced, one of the questions for decisions is as to whether the allegations against the petitioner and his conduct deprive him of the exercise of the writ jurisdiction in his favour. It was also seriously contended as to whether the aforesaid State enactment governs the situation.

3. Ext.P12 is an order passed inter partes. It is part of the findings therein that Dhanwanthari Centre is an institution which is aided, supported by Government and is a society registered with the District Collector as Chairman and District Planning Officer as the Secretary. It is committed to the welfare of Scheduled Castes and Scheduled Tribes. In

Ext.P12, it was accordingly found that though it is a charitable society, it was started using State Government funds. So much so, it may be inappropriate to decide the question whether the building in question falls within the purview of the State enactment, having regard to the definition of “public building” of Section 2(d) of that Act, having particular regard to clause (iii) thereunder. That apart, the other different contentions raised in this writ petition are those which can be appropriately urged and considered in a statutory appeal under the aforesaid State enactment.

4. As of now, there is an interim order issued on 26-10-2006 at the stage of admission directing that status-quo as on that day shall be maintained.

In the aforesaid circumstances, without expressing anything on merits, this writ petition is disposed of relegating the petitioner to statutory remedy by way of appeal under the aforesaid State enactment, which, if he chooses to take recourse to, shall be followed by filing the appeal within the period of three weeks from today. To aid the petitioner to

move the appellate authority for any interlocutory relief, it is directed that following the aforesaid interim order in this writ petition, status-quo shall be maintained for a period of five weeks. Needless to say, the appeal of the petitioner will be considered and decided by the competent appellate authority in accordance with law, after affording the petitioner an opportunity of being heard.

Issue copy today itself.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-